

ment question may be, "Why do the drafters of this bill use these forms?"

**Hon. Mr. Ouellet:** In one case we are dealing with an indictable offence. There, on the indictable offence, the tradition has been to draft it along these lines. The different language has been for summary convictions where, by tradition, bills have been drafted by giving the courts the lower courts more specific information, and saying "up to."

**Senator Flynn:** That is very interesting. That is the first time I have heard that. Do you suggest that the lower courts need to have a clearer drafting than the higher courts? Is that what you are saying?

**Hon. Mr. Ouellet:** Well, I am not here to defend the long legal tradition of Canada, but that has been the case throughout the history of Canada.

**Senator Flynn:** I agree with you. You are not here to defend it.

**Hon. Mr. Ouellet:** The tradition has been that for the magistrate's court it has been much more precise than for the higher court.

**Senator Flynn:** That is a fascinating theory, and I am glad to hear it. It is the first time I have heard it.

**Senator Walker:** Mr. Minister, aside from the humour of my friend and leader, which is always good, you yourself said one thing, and Mr. Marcel Lambert said another?

**The Chairman:** No, the same thing.

**Hon. Mr. Ouellet:** No, we both agreed.

**Senator Walker:** You both agreed?

**Hon. Mr. Ouellet:** Yes.

**Senator Walker:** Was it not Mr. Lambert who drafted this amendment?

**Hon. Mr. Ouellet:** No. What we amended were other parts of the bill, where there were only jail sentences, in order to explain more fully that a jail sentence does not automatically mean a jail sentence, and it could be a decision made by the judge to give a jail sentence, or to give a fine, or to give both.

**Senator Walker:** Quite so.

**Hon. Mr. Ouellet:** Therefore, there has been a series of amendments dealing with specific penalties in the bill where we said five years, or a fine, or both.

**Senator Walker:** Neither you nor Mr. Lambert intended that there should be, if the person is guilty, an arbitrary imprisonment for five years—no exceptions; five years or a fine of \$1 million. You did not intend that. You meant not more than five years, as I understand you, and not less than \$1 million.

**The Chairman:** Not more than that.

**Senator Walker:** Not more than \$1 million.

**Senator Macnaughton:** "Up to."

**Senator Walker:** Not more than that, all right.

**Hon. Mr. Ouellet:** "Liable to," and I think the word "to" is very important there. The word "to" means it could go

up to five years' imprisonment or it could go up to \$1 million.

**Senator Walker:** Fine. Then, Mr. Minister, with the greatest of respect, as a former Crown prosecutor, I think you should say so. I do not think there is any question about it. It is simple to say so.

I can see that if I were appearing for the Crown, I do not think I would have any trouble. There is no alternative here. Having regard for the way it is written at the present time I would say, "My Lord, it is automatic—five years' imprisonment a fine of \$1 million."

**The Chairman:** Senator Walker, the only thing on the other side of the argument is that there is a provision in the Criminal Code which provides for a discretion.

**Senator Walker:** Yes.

**The Chairman:** The point is that when you find something specific you ask yourself, "Is this an intention of Parliament to override the discretion in the Criminal Code?"

**Senator Walker:** Exactly.

**Mr. Cowling:** Having tampered with the Criminal Code, I think you now have to go the whole route and fix up everything.

**Senator Walker:** Yes.

**Mr. Cowling:** It may be that there are other sections in the act which are not referred to in this bill, which is an amending bill, in which the same problem will arise.

**Senator Walker:** The minister says there are.

**Mr. Cowling:** I presume we cannot look at those now because they are not in the bill. It may be that they will come before Parliament in another bill at some time.

**Senator Walker:** Yes.

**Mr. Cowling:** Possibly the whole matter should be dealt with at that time.

**Senator Flynn:** I would even suggest to the minister that he might send something to the Minister of Justice, that they might review their method of drafting this kind of clause, and get rid of this tradition, which is based on an assumption which does not exist any more. It seems crazy to me that you should use one language because you are addressing yourself to a lower court and another language because you are addressing yourself to a higher court.

**Mr. Cowling:** Except, Senator Flynn, that the Criminal Code is quite specific in dealing with indictable offences.

**Senator Flynn:** I agree.

**Hon. Mr. Ouellet:** The Criminal Code gives, despite any other legislation, the discretion to the court.

**Senator Flynn:** When you want a discretion to be exercised, and when you agree that the discretion should be exercised, why not always use the same language?